



HARKE CLASBY  
& BUSHMAN LLP

9699 NE Second Avenue  
Miami Shores, FL 33138  
www.harkeclasby.com

Main 305.536.8220  
Facsimile 305.536.8229  
Toll Free 888.823.8220

January 8, 2016

The Honorable Charles R. Breyer  
United States District Judge  
United States District Court for the  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

**RE: In Re: Volkswagen “Clean Diesel” Marketing, Sales Practices, And Products  
Liability Litigation, Case No., MDL No. 2672 CRB (JSC)**

Dear Judge Breyer:

Pursuant to Pretrial Order 2 dated December 22, 2015 [D.E. 336], I, Sarah Clasby Engel, of the law firm Harke, Clasby & Bushman LLP, respectfully submit this Application for Appointment to the Plaintiffs’ Steering Committee.<sup>1</sup>

Although there is no shortage of talented and highly accomplished lawyers willing and available to serve the plaintiffs in this action, I believe my legal background offers a unique perspective that would be of value to the plaintiffs and the lawyers selected by this Court to serve them. I practiced for many years with a blue-chip Florida defense firm--defending large corporations such as DuPont, New York Life, Arthur Andersen, and other Fortune 100 corporations in complex class actions and high-value complex commercial litigation. This distinguishes me from other applicants in that I can bring a real-world, corporate class action defense perspective to the plaintiffs’ bar assembled to prosecute this action.

Further, my experience as a woman and founding partner in a plaintiffs’ class action litigation firm also distinguishes me from many of the other applicants. Women have not historically had a robust level of leadership on Plaintiff Steering Committees as highlighted in the March 2014 issue of Trial Magazine in an article entitled *Why ... Leadership Diversity In Litigation Is Crucial*, 50-MAR Trial 40 (2014). The article details that “unfortunately, the lack of diversity in these leadership roles is longstanding. We recently reviewed all pending MDLs created by the Judicial Panel on Multidistrict Litigation (JPML) and found that they reflect an astounding dearth of women in lead counsel positions.” *Id.* The authors explained the importance of diversity, noting “[b]ecause these complex cases and MDLs affect a much larger--and presumably more diverse--group of people than smaller lawsuits, a more diverse leadership group is required for optimal results. The appearance of our legal system matters. The justice system needs to lead, not follow, on issues of access, equality, and diversity. Increasing the diversity of leadership in our cases will enhance public trust in our courts and our work.” My hope is that many women apply for a position in this matter and that this Court will appoint qualified women to both leadership and steering committee positions.

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<sup>1</sup> My firm represents Plaintiff Jennifer June Stempien whose action was previously pending in the Eastern District of Tennessee.

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I have also been certified by the Florida Supreme Court as a Circuit Civil mediator and have helped hundreds of parties amicably resolve both federal and state court matters. I believe this experience as a trained mediator assisting multiple parties with divergent interests reach a common ground will be of great assistance in assuring the smooth and efficient litigation, and potential resolution, of these important cases.

Finally, Florida is typically in the top five states for sales of automobiles, thus many Florida consumers will be affected by this litigation.<sup>2</sup> It would therefore be appropriate to have a Florida attorney representing a Florida consumer, such as myself, on the PSC.

**(1) Professional experience in this type of litigation:**

As set forth above, my firm has unique credentials litigating consumer class actions and complex commercial matters from both the plaintiffs and defense perspective. I submit that my twenty-two years of experience serving on both sides of the aisle gives me particular insight in how best to litigate and potentially resolve class actions of this kind. I have significant experience in class actions and MDLs in automotive and other types of complex commercial matters. Specifically, my firm was class counsel in *Aarons et al. v. BMW of North America, LLC*, Case No. 2:11-CV-07667-PSG (S.D.Cal). This action resulted in a multi-million dollar settlement on behalf of a nationwide class of owners of defective Mini-Cooper vehicles. In addition, I served as lead counsel in *RGN Properties, Inc. v. Miami-Dade Housing Agency*, Case No. 05-16420 CA 06 (Fla. 11<sup>th</sup> Jud. Cir. Ct.), which was a class action on behalf of low income Section 8 homeowners who did not receive on time rental payments from Miami-Dade County.

Indeed, Harke Clasby & Bushman LLP has served as Lead Class Counsel or as a member of the Plaintiffs' Steering Committee on a wide variety of multi-district litigations and multi-party class actions, and obtained over \$1 billion for consumers. This includes serving on the Purchase Claims Committee and as Consumer Allocation Counsel before Your Honor in the *In Re Bextra and Celebrex Marketing, Sales Practices, and Product Liability Litigation*, MDL No.: 05-01699. My resume details all of the actions, and a few additional examples are noted here: *In Re: Guidant Corp. Implantable Defibrillators Products Liability Litigation*, MDL No. 1708 (D. Minn.) (obtained a \$245 million dollar settlement for patients regarding the sale of defective cardiac defibrillators and pacemakers); *In Re High Sulfur Content Gasoline Products Liability Litigation* ("Shell"), MDL No. 1632 (Class Counsel in a nationwide class action litigation that obtained millions of dollars in benefits for class members regarding the sale of defective and dangerous gasoline products); *In re Horizon Organic Milk Plus DHA Omega-3 Marketing and Sales Practice Litig.* MDL No. 2324 (S.D. Fla.) (Co-Lead Class counsel in nationwide class settlement regarding alleged deceptive marketing of milk).

Most recently, my firm has served, and is currently serving, as Co-Lead Counsel in eight of the largest settlements obtained on behalf of borrowers against banks for their forced-placed insurance practices. These actions have led to regulatory and structural changes in the forced-placed insurance industry nationwide. See *Williams v. Wells Fargo Bank, N.A., et al.* Case No. 11-21233 (S.D. Fla.) (final approval granted); *Herrick v. JP Morgan Chase Bank, N.A., et al.* Case No. 13-21107-CV-FAM (S.D. Fla.) (final approval granted); *Hall v. Bank of America, N.A.*, No. 12-CV-22700 (S.D. Fla.) (final approval granted); *Diaz v. HSBC Bank USA, N.A.*, No. 13-CV-21104 (S.D. Fla.) (final approval granted); *Fladell v. Wells Fargo Bank, N.A.*, No. 13-CV-60721 (S.D. Fla.) (final approval granted); *Hamilton v. SunTrust Mortgage Inc., et al.*, Case No. 13-60749-CV-JIC (S.D. Fla.) (final approval granted); *Braynen v. Nationstar*

<sup>2</sup> See U.S. Dept. of Trans. Table MV-1 for 2013 (issued Jan. 2015) available at <https://www.fhwa.dot.gov/policyinformation/statistics/2013/mv1.cfm>

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*Mortgage LLC*, No. 14-CV-20726 (S.D. Fla.) (final approval granted); *Lee v. Ocwen Loan Servicing LLC*, No. 14-CV-60649 (S.D. Fla.) (final approval granted).

This wide range of experience in very high stakes litigation and my unique ability to work with other successful, driven attorneys, makes me perfectly suited for the Steering Committee in this important matter.

**(2) The names and contact information of presiding Judges before whom I have appeared in the matters:**

I have listed on Exhibit 1 hereto the names and contact information of some of the Judges before whom I have practiced.

**(3) Willingness and ability to immediately commit to time-consuming litigation:**

My partners and I are ready and able to pursue this action to completion. Additionally, my firm has the financial resources to fully commit to this litigation. In the many cases my firm has handled, we routinely and promptly pay requested Plaintiff costs assessments--in some instances for several hundreds of thousands of dollars--and always dedicate specific lawyers and administrative staff for each litigation. A copy of my resume is attached hereto as Exhibit 2.

**(4) Ability to Work Cooperatively with Others.**

My firm has a proven track record of working cooperatively with other plaintiffs' firms, and values its reputation in this regard. In fact, my firm has co-counseled with many of the firms seeking leadership positions in this litigation. As evidenced by Exhibit 3 (attached hereto), my application is supported by a number of law firms. Further, I believe my experience as a mediator has strengthened my ability to cooperatively work with parties and counsel whose interests are aligned with or adverse to my clients' interests.

**(5) Access to Sufficient Resources to Advance the Litigation in a Timely Manner.**

I seek appointment to the Plaintiffs' Steering Committee, or to serve in any other capacity the Court deems appropriate. My particular focus would be on behalf of the consumer class. As discussed earlier in this application, my firm has and is willing to commit the resources, labor and financial, necessary for this litigation. I have been relied upon over several years by my colleagues across the country to provide quality written and oral advocacy and legal research and analysis on challenging issues, and under demanding conditions, and I and my firm have willingly assisted in a broad array of tasks necessary to any successful PSC's function. Further, we have always provided our share of any financial expenses required to prosecute the litigation, including assessments of several hundreds of thousands of dollars in multiple matters. This case will be no different.

Thank you for the opportunity to be heard on this matter, and I look forward to participating in this litigation at whatever level the Court deems appropriate.

Respectfully submitted,



Sarah Clasby Engel, Esq.